

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 12/54 SC/Civil

BETWEEN: **Ponatoka Development Company**
Claimant

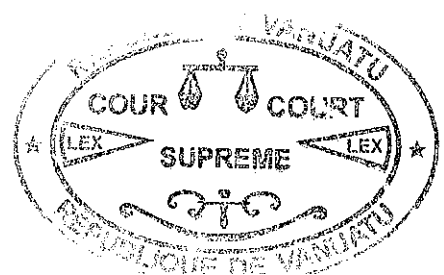
AND: **Evergreen Limited**
First Defendant
Republic of Vanuatu
Second Defendant
Glen Craig
Third Defendant
Family Songariki
Interested Party

Date: 20 October 2020
Before: Justice G.A. Andrée Wiltens
Counsel: Ms M-N. Ferrieux Patterson for the Claimant
Mr N. Morrison for the First Defendant
Ms S. Aron for the Second Defendant

Judgment

A. Introduction

1. The Claim in this case relates to a number of issues to do with land in the area of Mele Falls on Efate.



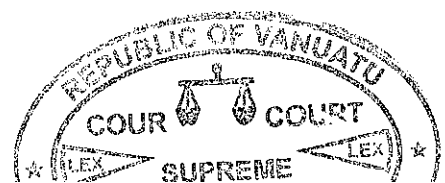
2. This decision deals with only one of the issues, namely an application for rectification of Lease Title No. 12/0822/387.

B. Background

3. The State Law Office has been representing the Director of the Lands Department. The Director is involved as it would devolve to him/her, if the application is successful, to make the rectification sought. There is no challenge as to the jurisdiction of the Director to make the rectification sought.
4. The Court has sought the assistance of counsel acting for the Director. Initially that was by way of submissions on this aspect of the case being sought by within 21 days of Ms Ferrieux Patterson's submissions. Her submissions were filed, somewhat later than expected, on 26 June 2020.
5. On 29 June 2020, counsel for the Director did not appear at a scheduled case management conference, so this aspect could not be advanced.
6. On 7 July 2020, counsel was again absent at the next scheduled conference.
7. On 17 July 2020, counsel advised the Court that the Director would file a sworn statement as to his understanding of the position within 14 days.
8. On 21 August 2020, at the next scheduled conference, the signalled sworn statement was advised to be forthcoming by 26 August 2020.
9. At the next conference on 22 September 2020, counsel for the Director was absent. A wasted costs order was made against counsel personally. As well, a final opportunity was given for the Director to file a sworn statement by 25 September 2020 – it was also forecast that if the statement was not received by that date, this aspect of the case would be dealt with by only having regard to the material provided by Ms Ferrieux Patterson.
10. A sworn statement by Mr Gambetta, the Director of the Lands Department, was filed at 3pm on 25 September 2020. He sets out the history of registered dealings involving the land in issue.

C. Discussion

11. What is suggested by the Claimant is that a mistake has been made in the historic dealings with the land concerned such that the present survey attached to the title does not accurately reflect all the land area within that Title.
12. Initially this area was detailed in pre-Independence Title 300. That title was cancelled on 11 October 1984.
13. The land area concerned was then registered, on the same day, as Lease Title No. 12/0822/014. This new title was described in the documentation as a replacement for the previous title. Accordingly, there should have been no material difference between the two. However, although the terms of the lease confirm the area of the land concerned to be 8 ha 62



ca, the appended survey records the area as 7 ha 72ca. The difference concerns a narrow strip of land on the other side of the Laobat river being no longer included in the survey.

14. The Claimant submits the correct measure to be 8 ha 62 ca. The Director however, points to the fact that the lessor and lessee at the time tendered registrable documents to the effect that the land area was only 7 ha 72 ca.
15. The Director also points to the Claimant not being involved with the land at that time. The registration from the previous lessee to the Claimant did not occur until 6 May 1996.
16. On 12 February 2010, the surrender in November 2009 of Lease Title No. 12/0822/014 was registered. That same day, 49 separate titles were registered, including Lease Title No. 12/0822/387. The documentation provided to enable registration of Lease Title No. 12/0822/387 appended a survey of the land concerned including the land on the other side of Laobat river.
17. There is accordingly also a difference of opinion between Claimant and Defendant as to the exact area of Lease Title No.12/0822/387 – whether it should be 0 ha 17 a 27 ca as presently depicted on the title or 1 ha 17 a 27 ca as submitted by the Claimant.
18. In the circumstances, to grant the application makes eminent sense. Lease Title No. 12/0822/014 is a replacement for pre-Independence Title 300. The area of land should accordingly have been unaltered. By not including the land on the other side of the river, the lessor of Lease Title No. 12/0622/014 has not been fairly treated and deprived of part of the leasehold land area. That requires rectification.
19. The same logic relates to Lease Title No. 12/0822/387. Instead of replicating the land area depicted in the survey appended to Leasehold Title No. 12/0822/014, it should include the relevant portion of the land across the river as originally set out in pre-Independence Title 300, and accordingly comprise 1 ha 17 a 27 ca.

D. Result

20. The Director of the Lands Department is to rectify the survey plan in respect of Title No. 12/0822/387 to incorporate the additional 25 ha 23 ca by the river, as originally shown in the pre-Independence title 300 survey.
21. The Director of the Lands Department is to similarly rectify Lease Title No. 12/0822/387 to reflect the true size of that plot as 1 ha 17 a 27 ca.
22. There is no order as to costs.

**Dated at Port Vila this 20th day of October 2020
BY THE COURT**

Gandra Uile
Justice G.A. Andree Wilfens

